



Dove A.E. Burns

Direct Dial: 917.994.2550
dove.burns@obermayer.com
www.obermayer.com

Obermayer Rebmann Maxwell & Hippel LLP

60 East 42nd Street | 40th Floor
New York, NY 10165

August 24, 2022

Honorable Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square, Room 2103
New York, NY 10007

MEMO ENDORSED

Re: Gannon v. 265 W. 37th Street LLC, *et al.*
Docket No.: 1:22-cv-00619-KPF

Dear Judge Failla:

Defendants, Westside Donut 8th Ave. Ventures LLC and 265 W. 37th Street LLC, through their counsel, write to alert the Court to a discovery dispute and to request that the Court order Plaintiff to serve all HIPAA Authorizations and respond to Defendants' interrogatories and requests for production.

On June 2, 2022, the parties jointly filed a Proposed Case Management Plan. (Doc. 31-1.) Therein, the parties proposed that Plaintiff would serve HIPAA Authorizations by July 1, 2022 and that the parties would serve interrogatories and requests for production of documents by July 15, 2022. *Id.*

On June 10, 2022, the parties participated in the Initial Pretrial Conference. During that conference, the parties requested that the case be referred to the District's Mediation Program. Thereafter, the Court referred the case to the mediation program and approved the proposed Case Management Plan. (Doc. 32, 33.) Defense counsel e-mailed Plaintiff's counsel on June 16, 2022 and June 29, 2022 regarding a demand and possible mediators. No response was received. Plaintiff's counsel only responded after, on July 6, 2022, the mediator filed a report that no mediation was held. (Doc. 34.) Plaintiff's counsel inquired whether Defendants wanted to request that the referral be reopened. Defense counsel immediately responded that Defendants would like to request that it be reopened and again requested a demand. To date, no response has been received. Accordingly, Defendants have proceeded to defend this action.

On July 15, 2022, Defendants served interrogatories and document requests on Plaintiff. Accordingly, the responses thereto were due by August 14, 2022. To date, Plaintiff has failed to serve the required HIPAA Authorizations or responses to Defendants' discovery requests. Notably, Plaintiff also failed to serve any written discovery requests on Defendants by the established deadline.

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Defendants have made good faith efforts to resolve this dispute. To that end, on August 16, 2022, defense counsel sent an e-mail to Plaintiff's counsel notifying him of the late responses and inquiring when they would be provided. When no response was received, on August 22, 2022, defense counsel telephoned Plaintiff's counsel and left a voicemail message regarding same. Having received no response, and not anticipating a response in light of Plaintiff's utter failure to prosecute this action or respond to any communications, Defendants seek the Court's assistance in resolving this discovery dispute.

WHEREFORE, Defendants respectfully request that the Court order Plaintiff to respond to Defendants' interrogatories and document requests by a date certain and to order any other relief the Court deems appropriate.

Respectfully Submitted,



Dove A.E. Burns, Esq.

Cc: Adam Ford, Esq. (via ECF and E-mail)

The Court is in receipt of Defendants' request, filed on August 24, 2022, and again on August 29, 2022, to correct a filing deficiency. (Dkt. #35, 36). Plaintiff's counsel is hereby ORDERED to file a letter on or before **September 7, 2022**, explaining (i) why he has disregarded the Court's Order directing him to participate in mediation in good faith (Dkt. #32) and (ii) why he has disregarded the discovery deadlines set forth in the Civil Case Management Plan and Scheduling Order dated June 10, 2022 (Dkt. #33). The Clerk of Court is directed to terminate the pending motion at docket number 36.

Dated: August 30, 2022
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE